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SIPDIS

PASS TO USTR FOR ADURKIN AND MMILLAN
STATE PASS USTR FOR CENTAM/CARIB DIRECTOR
STATE FOR EB/TPP/MTA/IPC, WHA/CEN, AND WHA/EPSC
DOL FOR ILAB

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SUBJECT: CARIBBEAN BASIN ECONOMIC RECOVERY ACT REPORT TO
CONGRESS: HONDURAS

REF: SECSTATE 215050

1. Post submits the following report in response to reftel request for the biannual report to Congress on the operation of the Caribbean Basin Economic Recovery Act (CBERA), as required by section 213(b) of the CBERA.

Commitment to WTO and FTAA

2. The GOH is complying with its commitments under the WTO and is supporting the advancement of a Free Trade of the Americas Agreement. Honduras has completed nearly all of its tariff obligations under the Uruguay Round Agreements. Honduran officials have voiced some concern regarding certain proposals addressed in the Doha Negotiations, especially related to market access issues for agricultural and non-agricultural goods. These concerns could place Honduras at odds with key U.S. objectives in the World Trade Organization.

3. Despite these concerns, Honduras remains an active participant in establishing free trade in the Western Hemisphere. Honduras, working in coordination with other Central American countries, has been negotiating with U.S. officials to establish the U.S.-Central America Free Trade Agreement (CAFTA) and has indicated that it would accept the inclusion of the Dominican Republic into the agreement as well.

Protection of Intellectual Property

4. Honduras remains largely in compliance with the Trade Related Aspects of Intellectual Property Rights (TRIPs); however, the government of Honduras has made limited efforts to strengthen existing intellectual property rights in the last year. Constitutional amendments, passed in 1999, updated the copyright law and addressed patent and copyright compliance issues. Honduras lacks two measures, the protection of integrated circuit designs and plant variety safeguards, before it can be brought into full compliance with TRIPs agreement. These two measures remain stuck before a committee in the National Congress.

5. In 2002, a major U.S. pharmaceutical company questioned the GOH's commitment to TRIPs mandated data protection. Honduran law and the TRIPs agreement guarantee data exclusivity rights for an established time frame. The U.S. company complained that the Ministry of Health was considering approval of another company to distribute a generic drug copy for which the U.S. company held the data exclusivity rights. After several months of delay, the Ministry of Health has recognized that the drug is a copy of the U.S. company's protected product, and therefore will not approve the other company's application.

6. The Government of Honduras advanced its compliance with World Intellectual Property Organization standards when it became a party to two "internet treaties" last year. The National Congress ratified the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT) in 2002.

7. Since placement on the 'Watch List' category of the U.S. Government's annual Special 301 Review in 1998 for failure to control broadcast television piracy, the GOH has taken an active role to monitor television stations against further violations. The negotiations of the U.S.-Central America Free Trade Agreement have provided a valuable forum to highlight and correct shortcomings in Honduran IPR legislation and implementation.

Protection of Internationally Recognized Worker Rights

8. Union officials remain critical of what they perceive as

inadequate enforcement by the Ministry of Labor (MOL) of workers' rights, particularly the right to form a union and bargain collectively, and the reinstatement of workers unjustly fired for union organizing activities. In November 1995, the MOL signed a Memorandum of Understanding with the U.S. Trade Representative's Office to implement 11 recommendations for enforcement of the Honduran Labor Code and the resolution of disputes. The MOL has implemented some of these recommendations, particularly as they relate to inspection and monitoring of assembly-for-export factories (maquilas). However, it has been slow to implement others due to resource constraints. Also, the Honduran Maquiladora Association initiated a code of conduct in July 1998 for the Maquiladora Association and its constituent companies. Through cooperation within the bipartite and tripartite commissions (unions, MOL, private sector) and other venues, MOL inspectors' access to maquila plants to enforce the labor code has improved, and MOL has continued to work to increase its effectiveness in enforcing worker rights and child labor laws.

9. The labor law prescribes a maximum 8-hour workday and 44-hour week. There is a requirement for at least one 24-hour rest period every week. The Labor Code provides for a paid vacation of 10 workdays after one year, and of 20 workdays after four years. The Constitution and Labor Code prohibit the employment of persons under the age of 16, except that a 15-year old may be permitted to work with the written permission of parents and the MOL. All persons under 18 years of age are prohibited from night work, dangerous work and full time work.

10. The Children's Code (September 10, 1996) prohibits a person of 14 years of age or less from working, even with parental permission, and establishes prison sentences of 3 to 5 years for individuals who allow children to work illegally. An employer who legally hires a 15-year-old must certify that the young person has finished or is finishing compulsory schooling. The MOL grants a number of work permits to 15-year-olds each year. Document fraud is prevalent among minors interested in working.

Commitment to Eliminate the Worst Forms of Child Labor

11. With regard to the elimination of the worst forms of child labor, the National Congress ratified the ILO Convention 182, and Honduras became a party to the Convention in June 2001. In the textile manufacturing sector, the elimination of child labor has seen great strides. International pressure on the export sector through agreements such as the Caribbean Basin Trade Partnership Act and negotiations such as the U.S.-Central American Free Trade Agreement have helped employers and employees recognize the importance of these laws. The government has created a special commission to establish a more complete program towards eliminating child labor and signed a Memorandum of Understanding with the ILO's International Program for the Eradication of Child Labor (IPEC). Despite a commitment of political support, child labor still exists in Honduras, with an estimated 400,000 children working illegally. Identified instances of child labor in Honduras include prostitution, fireworks industry workers, child divers on lobster boats, garbage dump pickers, and agricultural workers, including melon, sugar, and coffee.

Counter-Narcotics Cooperation

12. Honduras remains a trans-shipment point for narcotics trafficking through air, land, and maritime routes from South America to the United States. Indications of corruption in law enforcement, judicial, and military entities plagues counter-narcotics efforts. Despite technical support from the U.S. government, the arrest, prosecution, and incarceration of major narco-trafficking offenders remains problematic. A new money laundering law passed in March 2002 provided further assistance to U.S. and Honduran law enforcement and counterterrorism efforts. Finally, in the first seven months of 2003, Honduran counter-narcotics authorities seized more cocaine than they had seized in the previous four years combined. However, the recent counter-narcotics seizures can be credited in large part to strong pressure for increased results from Embassy officials.

Transparency in Government Procurement

13. The government of Honduras established a new contracting law in 2001. Under the law, foreign firms are entitled to national treatment for public bids, concessions, and government-contracted consulting services. As a part of the

new code, government procurement proceedings are to be made public through a regularly published report. In practice, U.S. companies have complained of instances of mismanaged and opaque bidding processes. One U.S. company underwent an extended bidding process, filled with questionable practices, in its attempts to win a government contract within the publicly owned utilities sector.

¶14. Despite these shortcomings, the Government of Honduras has initiated a system in which the United Nations Development Program oversees the bidding process for government procurement in a limited number of contracts. This attempt to make the process more transparent in some areas coincides with the preparations to initiate privatization of several government-owned entities. Honduras hopes such measures will make investment in these privatization efforts more attractive and competitive.

----- Expropriation -----

¶15. The Embassy has files on over 160 property, investment and commercial disputes involving U.S. citizens have been registered with the U.S. Embassy in Honduras. Eleven are considered potential expropriations, for purposes of the annual Helms Act report to Congress. Many of the cases relate to land disputes and fall under the jurisdiction of the National Agrarian Institute (INA). Other disputes include investment disputes involving U.S. investors, resulting primarily from inadequate titling procedures, and commercial disputes between U.S. citizens and Honduran citizens. On July 12, 2001, a Bilateral Investment Treaty (BIT) between the U.S. and Honduras entered into force. The bill provides for equal protection under local law for U.S. investors and allows expropriation only in cases that agree with international legal standards. In October 2002, the National Congress approved a one-time expanded arbitration law allowing for pending cases to file for arbitration. Of the 11 cases pending, only two U.S. citizens filed petitions for arbitration requests to INA by the July 21, 2003 deadline.

----- Extradition of U.S. Citizens -----

¶16. Honduras does not have a treaty or any other agreement allowing for the extradition of U.S. citizens.

----- General Economic Conditions -----

¶17. Honduras is one of the poorest and least developed countries in Latin America. The economy suffered a major setback after the destruction caused by Hurricane Mitch in 1998. The economy did not return to pre-Mitch levels until the end of 2000, and certain agricultural sectors, including the banana crop, have yet to attain pre-Mitch levels. Low world coffee prices have dramatically reduced revenues from this other key agricultural export commodity. The slowdown in the growth of the global economy, especially in the United States, has also had a depressing effect on the exports and economic growth in Honduras. Honduras' economic growth slowed to only two 2.5 percent in 2002, falling from a 2.7 6 percent growth in 2001 and a 4.75.2 percent growth rate in 2000. At this time, it is expected to grow at a rate of 3.2 percent in 2003.

¶18. Honduras has a growing textiles and apparel sector despite the negative effects of the U.S. economy's sluggish performance in 2001 - 2003. Currently ranked as the third largest textile exporter to the United States, the maquila sector (garment assembly) has been largely assisted by the implementation of the Caribbean Basin Initiative. The benefits provided through the Caribbean Basin Partnership Trade Agreement (CBTPA) have been crucial to the development of this industry, and industry officials have high hopes for future growth to be generated by new provisions in the proposed CAFTA. Although the elimination of world textile import quotas in December 2004 will put new demands on the competitiveness of this sector. In 2002, the maquila industry employed over 100,000 employees with exports from the industry totaling USD 2.439 billion.

----- Revitalization of the region -----

¶19. Honduras and Nicaragua underwent a period of tense relations in 2000 and 2001 as a result of a maritime border dispute. Nicaragua levied a retaliatory 35 percent tariff on Honduran goods as a result of the disagreement. The tariff was ruled illegal by the Central American Court of Justice in 2001, but was not lifted until March 2003. Both

countries seem to have moved past this disagreement to form a united Central American front in the CAFTA negotiations. The willingness of the Honduran government to move forward from this controversy indicates a commitment to regional integration and market liberalization.

Self-help measures to promote economic development

120. One area of concern that has been an impediment to greater U.S. investment, and thus Honduran economic development, is the lack of transparency and efficiency in the Honduran judicial system. Post has received complaints from U.S. citizens and companies regarding frustrations with the sluggish pace of the court system, as well as court cases never brought to fair trial. These inefficiencies in the court system mark a fundamental flaw in the government structure that merits attention and reform.

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